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10/070,776	04/08/2002	Etienne Cousin	BDL-379XX	9662

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EXAMINER

GLESSNER, BRIAN E

ART UNIT PAPER NUMBER

3635

DATE MAILED: 09/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/070,776

Applicant(s)

COUSIN, ETIENNE

Examiner

Brian E. Glessner

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 22, 24 and 29-48 is/are rejected.
- 7) ☒ Claim(s) 21, 23 and 25-28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

The following office action is in response to the application and preliminary amendment filed on April 8, 2002. Claims 1-48 are pending in the application. Claims 1-20, 22, 24, and 29-48 are rejected. Claims 21, 23, and 25-28 are objected to for being dependent upon a rejected base claim.

The examiner would like to point out that the applicant uses the phrase "approximately perpendicular" in the claims when describing the relationship between the lip and the support wall. However, the lip is only shown as being angled to the wall. Therefore, since the applicant is referring to the slightly angled joint as being "approximately perpendicular", then the examiner will take this same logic when examining the claims. The examiner will use applicant's same logic unless applicant shows an embodiment that is "approximately perpendicular".

#### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in France on July 13, 2000. It is noted, however, that applicant has not filed a certified copy of the French application as required by 35 U.S.C. 119(b).

#### ***Specification***

2. The disclosure is objected to because of the following informalities: The disclosure does not contain the heading for the various parts of the specification. Also, the disclosure does not contain a brief description of the drawings.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6-11, 14, 15, 17-20, 22, 24 and 30-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 6 recites the limitation "the free edge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 7 recites the limitation "the free edge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 8 recites the limitation "the sole lip" in line 2. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 9 recites the limitation "the free edge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 11 recites the limitation "the extreme portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 14 recites the limitation "the free edge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 15 recites the limitation "the free edge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 17 recites the limitation "the free edge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3635

13. Claim 19 recites the limitation "the extreme portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

14. Claim 20 recites the limitation "the sole lip" in line 2. There is insufficient antecedent basis for this limitation in the claim.

15. Claim 22 recites the limitation "the free edge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

16. Claim 24 recites the limitation "the extreme portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

In regard to claim 30, the scope of the claim is indefinite because of the use of the term "it" in line 2. The term it is indefinite because it is not clear as to exactly which element the term "it" is referring to. Is the term referring to the entire rail section, or is the term merely referring to the walls and joint and not the base. The claim applicant should replace the term "it" with the noun it is representing. The examiner will examine the claim as the term "it" meaning the entire rail section until further clarification is provided. The examiner would also like to point out that claims 32, 39, 45 and 48 use the term "it" in an indefinite manner.

In regard to claim 31, the scope of the claim is indefinite because of the phrase "possibly recycled". This phrase is indefinite because the examiner does not know if the material is recycled or not recycled. Appropriate correction is required.

17. Claim 32 recites the limitation "the butt rail sections" in line 10. There is insufficient antecedent basis for this limitation in the claim.

18. Claim 34 recites the limitation "the lower extreme portion" in line 7. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3635

19. Claim 36 recites the limitation "the lower extremity" in line 7. There is insufficient antecedent basis for this limitation in the claim.

In regard to claim 37, the scope of the claim is indefinite because of the phrase "standard color, tint and brightness". The examiner is not certain as to what "standard" color, tint and brightness would be. Is it white, or some other color, tint and brightness.

20. Claim 38 recites the limitation "the lower extremity" in line 2. There is insufficient antecedent basis for this limitation in the claim.

21. Claim 40 recites the limitation "the free edge" in line 3. There is insufficient antecedent basis for this limitation in the claim.

22. Claim 41 recites the limitation "the free edge" in line 5. There is insufficient antecedent basis for this limitation in the claim.

23. Claim 41 recites the limitation "the extreme portion" in line 9. There is insufficient antecedent basis for this limitation in the claim.

24. Claim 42 recites the limitation "the free edge" in line 9. There is insufficient antecedent basis for this limitation in the claim.

25. Claim 43 recites the limitation "the sole lip" in line 11. There is insufficient antecedent basis for this limitation in the claim.

26. Claim 43 recites the limitation "the extreme portion" in line 9. There is insufficient antecedent basis for this limitation in the claim.

27. Claim 44 recites the limitation "the free edge" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Art Unit: 3635

28. Claim 44 recites the limitation "the extreme portion" in line 16. There is insufficient antecedent basis for this limitation in the claim.

29. Claim 46 recites the limitation "the lower extreme portion" in lines 7 and 8. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

30. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

31. Claims 1-3, 8-20, 29-31, 33-36, 42 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicot et al. (FR 2,619,531 A1).

In regard to claim 1, Nicot discloses a rail section for stretched fabric partitions, said section comprising at least one groove 3 (examiner's attachment) defined by two lateral walls 1, 2 (examiner's attachment) and a base wall 4, said groove being designed to contain at least one edge of the stretched fabric after it has been mounted in the section, characterized in that being of a single piece, said rail section comprises a joint 5 for keeping the edge of the stretched fabric in said groove, said joint being made of a material having a flexibility differing from that of the material constituting the walls of aid groove.

In regard to claim 2, Nicot discloses the claimed invention, wherein the cross-section of said groove is generally U-shaped. The extreme portions of the lateral walls of the groove opposite the base wall of the groove defining an opening at least partially sealed off by the joint for retaining the edge of the stretched fabric.

Art Unit: 3635

In regard to claim 3, Nicot discloses the claimed invention, wherein the joint comprises a single lip protruding from one of the lateral walls 2 of said groove, known as a joint support wall, said lip comprising an internal face opposite the base wall of the groove and an opposing external face.

In regard to claims 8-11, Nicot discloses the claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall.

In regard to claim 12, Nicot discloses the claimed invention, wherein the lip of the joint comprises an internal face oriented towards the base wall of the groove and an external opposing face, the internal face and the external face of the joint are not parallel to each other.

In regard to claim 13, Nicot discloses the claimed invention, wherein the internal face of the single lip of the joint extends "approximately" perpendicular to its support wall.

In regard to claims 14-19, Nicot discloses the claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall.

In regard to claim 20, Nicot discloses the claimed invention, wherein the external face of the single lip of the joint extends "approximately" perpendicular to the lateral walls of the groove.



Art Unit: 3635

In regard to claim 29, Nicot discloses the claimed invention, wherein the lateral walls of the groove are made of an approximately rigid material selected from the group comprising metal alloys and rigid polymers, the joint being made of a substantially flexible material, such as a flexible polymer, abstract.

In regard to claim 30, Nicot discloses the claimed invention, wherein a first material is used for the substantially rigid walls of the groove, and a second material is used for the joint. Although Nicot does not specifically disclose that the two materials are obtained by co-extrusion or duplicate molding, the examiner would like to point out that these limitations are product-by-process limitations. Therefore, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. Thus, since the final products are the same, the claimed limitations are met.

In regard to claim 31, Nicot discloses the claimed invention, wherein the walls of the groove are made of rigid PVC and the joint being made of flexible PVC, abstract. The examiner would like to point out that the joint is somewhat flexible because it has to flex to allow the entry of the fabric. If it were not flexible, it would not flex to allow the fabric to enter.

In regard to claim 33, Nicot discloses a false wall, not shown (abstract), comprising a fabric fixed along edges of the wall to a support fixed to the walls of a room, said support comprising a rail formed of portions of sections as shown in claim 1, characterized in that the

Art Unit: 3635

edge of the fabric is provided with an excess thickness 8 (examiner's attachment) taking support against the internal face of the joint.

In regard to claim 34, Nicot discloses the claimed invention, wherein the false wall is used as a false ceiling (abstract and figures 3 and 4), the groove for the rail facing downwards, the lateral walls being approximately vertical with a first wall close to the wall and a second wall being towards the inside of the room, the joint projecting from a lower extreme portion of the first lateral wall, the excess thickness portion being against both the internal face of the second wall and the internal face of the joint, the fabric is also stretched horizontally and deviated upwards so as to penetrate into the groove.

In regard to claim 35, Nicot discloses the claimed invention, wherein the two lateral walls of the groove have "approximately" identical heights, the external face of the joint being placed "approximately" perpendicular to said lateral walls, and thus in the continuity of the stretched fabric.

In regard to claim 36, Nicot discloses the claimed invention, wherein the two lateral walls have different heights, the first lateral wall 2 of the groove close to the wall being of smaller height than the second wall 1, the external face of the joint being slanted at an angle so as to form a continuity between the extension plane of the stretched fabric and the lower extremity of the first lateral wall.

In regard to claim 42, Nicot discloses the claimed invention, wherein the lip of the joint comprises an internal face oriented towards the base wall of the groove and an external opposing face, the internal face and the external face of the joint not being parallel to each other, the internal face of the single lip of the joint extends "approximately" perpendicular to its support

Art Unit: 3635

wall, a free edge of the lip is placed inside the groove, and the free edge of the lip is approximately in support against the lateral wall of the groove placed opposite the support wall of the joint.

In regard to claim 43, Nicot discloses the claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall, and the single lip of the joint extends "approximately" perpendicular to the lateral walls of the groove.

***Claim Rejections - 35 USC § 103***

32. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

33. Claims 4-7, 37, 38, 40, 41, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicot et al. (FR 2 619 531 A1).

In regard to claim 4, Nicot discloses the claimed invention except for specifically disclosing that said joint is approximately flat with the internal face of the lip being approximately parallel to the external face. It would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to make the joint flat instead of tapered, since applicant has not disclosed that said flat joint solves any stated problems or is used for any particular purpose and it appears that the joint will work equally well

Art Unit: 3635

if it were tapered or flat. The applicant has not specifically stated that the flat joint will allow the apparatus to function in a more efficient manner. Therefore, the examiner takes the position that said flat joint lacks criticality to the claimed invention.

In regard to claim 5, Nicot discloses the basic claimed invention, wherein the single lip of the joint extends "approximately" perpendicular to the support wall.

In regard to claims 6, 7, 40 and 41, Nicot discloses the claimed invention, wherein the single lip of the joint extends along an angle of less than 65 degrees with respect to its support wall, and a free edge of the lip is placed inside the groove in support against the lateral wall of the groove placed opposite the joint support wall, figures 1-4. The lip also projects from the extreme portion of its support wall.

In regard to claim 37, Nicot discloses the claimed invention except for specifically disclosing that the joint is made of a material exhibiting a color, tint or brightness identical to or coordinated with those of the stretched fabric, or that the rest of the rail section is of standard color, tint and brightness. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the joint of the same color, tint and brightness as the fabric, because, by doing so, the joint will blend in with the fabric. Therefore, it will be less noticeable and will not stick out. Thus, the aesthetics of the room will be maintained. Further, one of ordinary skill would also not be concerned with the color, tint and brightness of the remainder of the device because it will be hidden from view when the fabric is put into place.

In regard to claim 38, Nicot discloses the claimed invention except for specifically disclosing that the lower extremity of the second wall is rounded. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the end of the

Art Unit: 3635

wall rounded, because by doing so the stretched fabric will not be as likely to tear or be punctured by the end of the wall. If the wall were pointed, it may tear the fabric. However, if the wall is rounded, the fabric will smoothly transition over the end and change direction into the groove.

In regard to claims 46 and 47, Nicot discloses the claimed invention. Claims 46 and 47 contain the same limitations as claims 34-38. Therefore, claims 46 and 47 are rejected on the same grounds of rejection set forth above with respect to claims 34-38.

34. Claims 39 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nicot et al. (FR 2 619 531 A1) in view of Scherrer (FR 2 630 476 A1).

In regard to claims 39 and 48, Nicot discloses the claimed invention except for specifically disclosing two coplanar horizontally stretched fabrics, wherein the fabrics are held by a rail section having an upper horizontal core prolonged downwards by a vertical central wing and two other lower horizontal wings situated on both sides of the vertical central wing, such that the horizontal wings constitute the lateral walls of two opposing grooves and a joint for retaining the excess thickness of the edges of the two stretched fabrics. Scherrer teaches that a structure having a horizontal core, a vertical central section with two horizontal sections on each side of the vertical section to hold two coplanar fabrics is known (figures 5 or 6). It would have been obvious to incorporate this teaching into Nicot's invention, because by using a similar structure with Nicot's joint, the wall or ceiling could be covered with multiple pieces of fabric instead of a single piece extending the entire length of the wall or ceiling. This would produce a more pleasing aesthetic appearance to the room.

***Allowable Subject Matter***

35. Claims 21, 23, and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. This holding of allowable subject matter is provisional and subject to reconsideration upon receipt of the amended claims to comply with the specifications set forth in 35 U.S.C. 112, second paragraph.

36. Claims 22, 24, 32, 44 and 45 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

37. The following is a statement of reasons for the indication of allowable subject matter: Although the prior art references of record show some similar features of applicant's claimed invention, they fail to show or teach the use of a one piece rail and joint, wherein the joint has a different flexibility than the rail and the joint is comprised of two lips as claimed in claims 21, 25, 44 and 45. The examiner also believes that it would not be obvious to one having ordinary skill in the art to incorporate a C-shaped groove of the type disclosed in claim 32 into Nicot's '531 invention.

***Conclusion***

38. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rowlands et al., Berman, Assael, Yerusalim et al., Livingston et al., Baslow, MacDonald, and Keebler.

Art Unit: 3635

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031.

The examiner can normally be reached on Monday-Friday 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.

B.G.  
August 28, 2003

A handwritten signature in cursive script, appearing to read "Brian E. Glessner".

**BRIAN E. GLESSNER**  
**PATENT EXAMINER**

EXAMINER'S AMENDMENT

PROFIL P1

PROFIL M1

COUPE

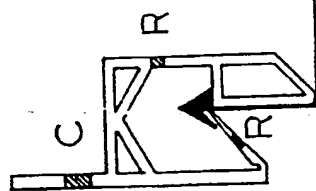


fig 3

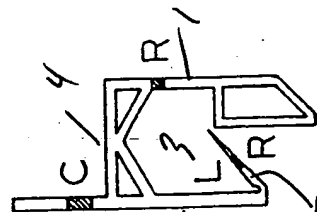


fig 1

8 HARPON

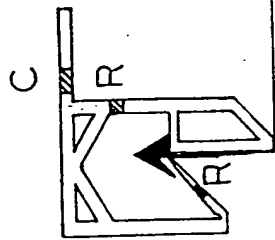


fig 4

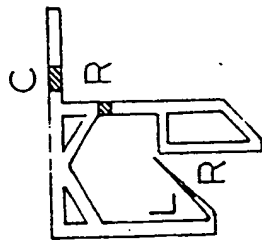


fig 2

HARPON